

Claims 1-7 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over United States Patent No. 6,196,354 in light of Anthony.

In support of the rejection the Examiner states that Anthony discloses a tree stand having a seat 14, a platform 16, and angle adjustment member 64, which is received within a bracket assembly 60, securing chain C, and pivoting frame member 12. He states that Anthony et al. fail to disclose a telescopic seat and telescopic frame standoffs. However, the Examiner concludes that modifying Anthony et al. with a telescopic seat, as well as telescopic frame standoffs, is no more than an obvious design choice not expected to produce any new and unexpected results. Therefore, to one of ordinary skill in the art, it would have been obvious to provide the tree stand of Anthony et al with telescopic features so as to permit vertical seat adjustability and horizontal frame adjustability relative to a tree.

Unfortunately, it is clear that the Examiner has mischaracterized the cited reference, its applicability to the Applicant's invention, and its value as a teaching reference in providing any suggestion whatsoever to provide the distinct features of the Applicant's invention.

At the onset it should be noted that both Anthony *fails to disclose* numerous limitations from claim 1, even beyond those

acknowledged by the Examiner, and that Anthony could not be modified to incorporate these claimed features. Thus it could be said that the claimed features are simply incompatible with Anthony. Accordingly, it simply cannot be obvious to modify Anthony with the claimed features, if such features could not be incorporated into Anthony as disclosed, even in hindsight, without undue experimentation and modification.

In particular, the platform of Anthony is a closed rectangular loop, which implies probably construction by bending a metal member until the ends meet. A pair of connection members (44) extend from the rear end of the base, and allow pivotal attachment to a pair of U-shaped horizontal members, which form part of a vertical member (22). The vertical members (22) or seat supports (12) engage the tree with a "tree abutting member" (26).

Initially, it is quite clear that the platform fails to meet the Applicant's limitations from lines 8-10 of claim 1 that "the side members [are] angled toward each other such that the front member is longer than the rear member, and the side members having an open end near the rear member.

A) The criticality of the feature embodied in the first clause of this limitation is that the side members of the Applicant's invention engage the tree, thus they are angled to meet the tree. However, in Anthony, the side members are clearly parallel, and the front member is not "long than the rear member".

B) The criticality of the feature embodied in the second clause of this limitation is that the open end is necessary to allow the levelers to be incorporated. However in Anthony, no part of the platform could even have an open end to accommodate the levelers.

C) The combined criticality is that, this angling, in conjunction with Applicant's "levelers" which will be discussed in detail later, allows the device to be used on and adjust to trees of various diameters. But, with their significantly different platform construction and arrangement with respect to its other components, Anthony et al. fail "by a mile" to meet these claim limitations. Without "side members having an open end", the Applicant's levelers could not be used with Anthony et al. Further, without the side members "angling inward", the tree stand would only be usable on very large diameter trees. However, it is quite clear that these limitations are not met by Anthony. Further, there is no suggestion in Anthony to make such drastic modifications. In fact, Anthony uses a pair of tree abutting members, basically comprising toothed plates mounted to the "seat support" to engage the tree - it does not use the platform. Since the platform of Anthony et al. does not nearly come into contact with the tree, there would be no reason one would modify Anthony with the Applicant's claimed limitations. That is - why have "open ended sides of the platform", "angled inward", if the sides do not in any way engage the tree? Accordingly, for this reason

alone, the rejection under 35 U.S.C. § 103(a) is improper, and the allowance of claims 1-7 is warranted.

However, Anthony also fails to meet or suggest the "lower levelers", required by Applicant's claim 1. Claim 1 requires:

"a pair of lower levelers, including a pair of lower stanchions, each of the lower stanchions extending into the open end of one of the side members such that each of said lower stanchions is independently adjustable with respect to said side member to meet varying contours of the tree".

Anthony is only capable of adjusting relative angle between the platform and the seat support, and the pivotal angle of the seat. Applicant's invention is capable of the same with its "bracing system", but the claimed features add additional functionality not contemplated or reasonably suggested by Anthony. In particular, nothing in Anthony suggests any structure, that adjusts the tree stand to meet the contours of the tree, or in any way adjusts its manner of engaging the tree. All Anthony et al. discloses is a device that is capable of varying the angle between the platform and seat support. The Applicant cannot fathom how his critical improvements are rendered to be "no more than an obvious design choice not expected to produce any new and unexpected results". The Applicant urges the Examiner to review the application as filed, and in particular note the usefulness of

this feature, as exemplified in FIG 4, 5, and 6. The Applicant urges the Examiner to consider whether Anthony et al. would be capable of conforming to a tree as well as the Applicant's invention having the claimed features. Would Anthony et al. be at all useable on a tree is not fully vertical but "jogs to the side"?

Applicant's claim 1 also requires "that the seat assembly is mounted to the seat support top such that the seat is adjustable in height with respect to the platform." However, the seat connection members 36 of Anthony attach one side of the seat to the seat supports 12 at a fixed height. The seat supports 12 themselves are not adjustable in height. Thus, Anthony merely allows the seat to pivot so as to remain level, or to fold for storage. Thus, Anthony is incapable of practically adjusting the height of the seat with respect to the platform as required by Applicant's claim 1. This is an additional reason why claim 1 is patentably distinct from Anthony et al. Still further, claim 4 adds more limitations to the claimed seat support structure. However, when rejecting claims 1-7, the Examiner provided no reasoning concerning how Anthony logically anticipates or makes obvious such additional limitations. Accordingly, Applicant has little to refute, other than to say, Anthony does not meet the limitations in claim 4 in any conceivable way.

Applicant's claim 1 also requires:

"a pair of upper levelers, each upper leveler including a sleeve and an upper stanchion mounted for slidable movement within the sleeve, each sleeve mounted to one of the seat supports, the upper levelers each adjustable to accommodate varying contours of the tree"

Once again, in no conceivable way does Anthony illustrate or suggest such a feature. Anthony has nothing which adjusts to the contours of the tree. Anthony has no "sleeve" which would accommodate the "upper stanchion". Once again, the Applicant cannot fathom how such innovations could be dismissed out-of-hand as being "no more than an obvious design choice not expected to produce any new and unexpected results", and thus obvious in light of Anthony et al.

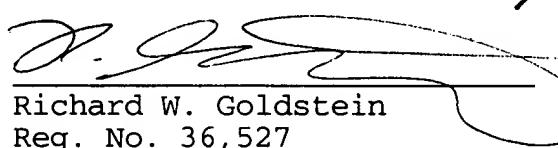
Claims 2-7 contain many additional limitations. However, in his terse action, the Examiner has not even attempted to provide reasoning of how Anthony et al. meets these limitations.

The Examiner is urged to review the Applicant's invention as a whole, and review the cited references. Without even considering the additional limitations presented in claims 2-7, many limitations of claim 1 are not met by Anthony et al. None of these limitations are in any way suggested by Anthony et al. Further, Anthony et al. clearly cannot even be modified in a way

which meets such limitations. Thus, the rejection of claims 1-7 under 35 U.S.C. § 103(a) is improper. The applicant respectfully submits that a proper re-evaluation of the claimed invention by the Examiner in light of the above discussion will reveal the patentability thereof. Please remove the rejection under 35 U.S.C. § 103(a) and enter the allowance of claims 1-7.

In view of the above, reconsideration and allowance of the pending claims are respectfully solicited.

Respectfully submitted,


Richard W. Goldstein
Reg. No. 36,527
Attorney For Applicant(s)
2071 Clove Road
Staten Island, New York 10304
(718) 727-9780